

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION**

MATTHEW CATANZARO,

Plaintiff,

CIVIL ACTION NO. 10-CV-14554

vs.

DISTRICT JUDGE NANCY G. EDMUNDS

CARR, et al.,

MAGISTRATE JUDGE MONA K. MAJZOUN

Defendants.

**ORDER FOR PLAINTIFF TO SHOW CAUSE WHY DEFENDANT NEWVILLE
SHOULD NOT BE DISMISSED**

Plaintiff filed the instant civil rights complaint on November 16, 2010. (Docket no. 1). In January 2011 the Court granted Plaintiff leave to proceed *in forma pauperis* and ordered the U.S. Marshal Service to effectuate service on Defendants. (Docket nos. 7, 8). On January 25, 2011 waiver of service was returned unexecuted as to Defendant Newville. On March 30, 2011 the Court again ordered service as to Defendant Newville. (Docket no. 42). Consequently, the U.S. Marshal Service made a second attempt to effectuate service on Defendant Newville on June 1, 2011 by mailing a copy of the summons and complaint to a new address provided to them by the Michigan Department of Corrections. Once again the waiver of service was returned unexecuted. At this time, Defendant Newville has not been served.

The time for service of the summons and complaint is established under Federal Rule of Civil Procedure 4(m), which provides:

If a defendant is not served within 120 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time. But if the plaintiff shows good cause for the failure, the court must

extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m). The Sixth Circuit reviews “for abuse of discretion a district court judgment dismissing a complaint for failure to effect timely service of process.” *Johnson v. Hayden*, No. 99-3959, 2000 WL 1234354, at *3 (6th Cir. Aug. 24, 2000) (citing *Byrd v. Stone*, 94 F.3d 217, 219 (6th Cir.1996)).

Service should have been made on Defendant Newville no later than March 16, 2011. Therefore, Plaintiff is **ORDERED** to show cause in writing why this Defendant should not be dismissed for failure to comply with Federal Rule of Civil Procedure 4(m). Plaintiff must make such showing by **October 28, 2011**.

IT IS SO ORDERED.

NOTICE TO THE PARTIES

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of fourteen days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: September 23, 2011

s/ Mona K. Majzoub
MONA K. MAJZOUB
UNITED STATES MAGISTRATE JUDGE

PROOF OF SERVICE

I hereby certify that a copy of this Order was served upon Matthew Catanzaro and Counsel of Record on this date.

Dated: September 23, 2011

s/ Lisa C. Bartlett
Case Manager